

1 on 30 witnesses, nothing, zero. Mr. Keller.

2 MR. KELLER: I just want to say two things. Not only did
3 him and his parties not conduct discovery, but even without
4 discovery, they had access to a lot of other discovery which is
5 where they came up with this list of people, so they knew about
6 these people when it was time to file the direct case.

7 And as far as compelling witnesses, none of us has the
8 ability of our own power, not even the Bureau, to compel the
9 presence of a witness that's not in their own control. They have to
10 either rely on the voluntary cooperation of the witness, or as you
11 suggest, come to you and get a subpoena.

12 JUDGE SIPPEL: Get a subpoena. And that's how --

13 (Simultaneous speech)

14 MR. KELLER: Usually, very often witnesses are not your
15 own --

16 JUDGE SIPPEL: That's right.

17 MR. KELLER: And as far as what other parties should or
18 shouldn't do, that's neither here nor there.

19 JUDGE SIPPEL: Exactly.

20 MR. KELLER: I mean, each party -- Mr. Havens has
21 advocated all along that he's an important part of these
22 proceedings because he knows so much, and this, that, and the
23 other. And then when it's time to file the direct case, he sits
24 back and expects us to, I guess, file a case against our own best
25 interest, and for the Bureau to file whatever case he thinks they

1 should file.

2 JUDGE SIPPEL: Well --

3 MR. KELLER: It's just inappropriate.

4 JUDGE SIPPEL: We know, I've been down that road. I'm very
5 hurt about that. I really am hurt. I mean, let me tell you
6 something. I mean, you can have these witnesses subpoenaed, and ask
7 for permission to treat them as hostile witnesses, and cross-
8 examine them. You wouldn't even have to lead them on direct.

9 There are so many procedures that you have not even
10 touched. I mean, this is why it's such an insult to be here this
11 morning and hear these things. I mean, I'm just boggled, my mind is
12 boggled, all this time.

13 MR. STENGER: Are you suggesting -- I'm not going to
14 subpoena 30 witnesses.

15 JUDGE SIPPEL: You're not. Well, you're not going to do it
16 now.

17 MR. STENGER: Not now, but are you suggesting that if I
18 were to subpoena the State of New Jersey Authorities, who are the
19 ones that Pinnacle is providing service to, or Puget Sound Energy,
20 because they're -- that you would entertain those subpoenas,
21 putting aside the other -- there's a long list of witnesses that
22 could have been relevant, but the Bureau in its discretion decided
23 not to call any of them. Would you entertain subpoenas for Donald
24 DePriest, the State of --- the New Jersey Turnpike Authority, the
25 New Jersey Sports Authority, and Puget Sound Energy?

1 JUDGE SIPPEL: Well, you might have been able to talk to
2 those folks and gotten statements from them. I mean, lawyers
3 generally do that. You'll be able to get --

4 MR. STENGER: Donald DePriest has not --

5 JUDGE SIPPEL: Donald DePriest is different. If you wanted
6 Donald DePriest and you had a basis to get him, and you had a
7 subpoena request, you might get it. This is --- these are just -- I
8 mean, this is silliness. This is Evidence 101.

9 MR. STENGER: We have obtained documents --

10 JUDGE SIPPEL: Let's pass on this. I'm finished. I'm
11 finished.

12 MS. KANE: Your Honor --

13 JUDGE SIPPEL: You went first, Mr. Keller. I'll be right
14 back, Ms. Kane.

15 MR. KELLER: Well, I just want to say we would object to
16 the presentation of new witnesses now.

17 JUDGE SIPPEL: Of course.

18 MR. KELLER: This is all that could have --

19 JUDGE SIPPEL: No, I'm talking about before.

20 MR. KELLER: Right.

21 JUDGE SIPPEL: I'm not talking about now.

22 MS. KANE: Your Honor, we would ask that -- there are
23 procedural orders in place for all of these things to have occurred
24 prior to now.

25 JUDGE SIPPEL: Yes.

1 MS. KANE: And the fact that EVH did not comply with those
2 orders, we would ask that you strike their request to allow any of
3 these additional 30-plus witnesses. We would ask that you request
4 their -- strike their request that any of these witnesses be
5 allowed to attend and be available for examination at the hearing.

6 JUDGE SIPPEL: Well, I -- your request is granted. I don't
7 want to hear anything more about these 30 witnesses. They are not
8 welcome here. It's as simple as that. Next item of business.

9 Again, what I'm giving you is a head's up of why I'm not
10 going through those documents one at a time this morning. That's
11 all I'm trying to do. You're going to get a written ruling on all
12 the evidence. I told you exactly how I intend to do it. Those that
13 are -- I mean, things like the antitrust case, I don't think I'm
14 going to learn anything from an antitrust case that's relevant to
15 this case no matter how harsh some of the testimony may be. I'm
16 just -- I'm not going to deal with that. It's not going to help in
17 the decision making in this case. It's just going to detract from
18 it, confuse. And that's just Example A. I mean, there are other
19 examples like that.

20 MR. STENGER: I think --

21 JUDGE SIPPEL: You're going to get the ruling. If you
22 don't like it, I understand, you can do whatever you want with it.

23 MR. STENGER: Your Honor, some of the documents -- it's my
24 understanding, I don't have it in front of me, but I believe that
25 some of the documents that are labeled "O" for other --

1 JUDGE SIPPEL: Yes.

2 MR. STENGER: I believe that those documents had to do
3 with earlier pending interlocutory appeals, and I note that --

4 JUDGE SIPPEL: How am I going to know that?

5 MR. STENGER: Pardon me?

6 JUDGE SIPPEL: How am I going to know that?

7 MR. STENGER: Well, I think that it's specified in there.

8 JUDGE SIPPEL: It says other, other business? I'm going to
9 get that -- I'm going to understand it from other business?

10 MR. STENGER: If it wasn't clear, Your Honor -- I'll go
11 back and look at it. I believe -- all I'm trying to say, Your
12 Honor, is --

13 JUDGE SIPPEL: Who wrote that thing? Did you write it?

14 MR. STENGER: Your Honor --

15 JUDGE SIPPEL: Did you write it?

16 MR. STENGER: Yes, we --

17 JUDGE SIPPEL: You wrote it.

18 MR. STENGER: -- categorized the documents.

19 JUDGE SIPPEL: You wrote it.

20 MR. STENGER: All I'm trying to say--

21 JUDGE SIPPEL: You wrote it. Did you write it?

22 MR. STENGER: Write what?

23 JUDGE SIPPEL: Write the explanation "O", is that your
24 idea? Is that your -- did you create that monster?

25 MR. STENGER: I created it with my client, in consultation

1 with my client. I mean, I --

2 JUDGE SIPPEL: So, you took responsibility for it. You
3 take responsibility for it.

4 MR. STENGER: Your Honor --

5 JUDGE SIPPEL: You take responsibility for it.

6 MR. STENGER: I take responsibility for all the filings,
7 yes.

8 JUDGE SIPPEL: Okay.

9 MR. STENGER: But I just want to make clear that the -- I
10 believe the "O" documents had to do with interlocutory appeals that
11 were pending at the time, but subsequently the Commission came out
12 with an order and disposed of all of those interlocutory appeals.
13 I just wanted to mention that to Your Honor.

14 JUDGE SIPPEL: So, I'm left in the dark. I don't know what
15 the heck you're talking about. It's up to me to go and figure it
16 out. I was not participating in that brainchild of A, B, C, and O,
17 whatever it was. I mean, it's -- look, you -- this is not the way
18 to impress somebody.

19 I'm sorry, I'm going to move forward. I'm running out of
20 things to do here. Does anybody else have anything else to do? Ms.
21 Kane, you have to work with the reporter and you have to put these
22 exhibits in. You have to get him the exhibits and you have to have
23 them marked. I think he's right here. He's expensive.

24 You also can submit the statement of Calabrese with the
25 lines through it. If there's going to be a motion to strike it

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1 later on, I'll consider it, but that's my ruling.

2 MR. STENGER: Do you want an unstricken copy of
3 Calabrese's statement for --

4 JUDGE SIPPEL: I got it.

5 MR. STENGER: Oh, you have it? Okay.

6 JUDGE SIPPEL: You gave it to me.

7 MS. KANE: We have an unredacted --- I mean, an unstricken
8 version, but we will go ahead and if I understand you correctly,
9 Your Honor, you would like us to submit to the reporter a copy of
10 Mr. Calabrese's testimony with the lines stricken that we had
11 requested in our objections to --

12 JUDGE SIPPEL: In fact, you can initial each one that you
13 strike and the date. And that's it, simple as that.

14 MS. KANE: We're happy to do that, Your Honor. I'm not
15 sure that everybody else needs to be here for that.

16 JUDGE SIPPEL: No, they don't.

17 MS. KANE: Okay. We shouldn't have to do that on the
18 record.

19 JUDGE SIPPEL: No.

20 MS. KANE: Okay. We will --

21 JUDGE SIPPEL: Just be sure you give a copy to everybody
22 after it's done. You know, you don't have to rush doing it today,
23 but get a copy -- for example, this is your list of exhibits.
24 Right?

25 MS. KANE: Well, no, our believe our list is longer than

1 one page, Your Honor.

2 JUDGE SIPPEL: Well, EV official notice -- oh, these are
3 official notice exhibits.

4 MS. KANE: We have official notice exhibits, and then we
5 have approximately 79, I believe, exhibits. Correct, Your Honor.

6 JUDGE SIPPEL: Okay. Those are the ones that you're going
7 to give to the reporter today, because I granted your motion.

8 MS. KANE: Correct, Your Honor. Thank you.

9 JUDGE SIPPEL: And you work with him to put them -- mark
10 them and put them in the record.

11 MS. KANE: And, Your Honor, we have both confidential and
12 public versions. Do you want both of those on the record?

13 JUDGE SIPPEL: Well, no, not if it's confidential stuff.

14 MS. KANE: Okay.

15 JUDGE SIPPEL: You've got to handle those differently. Put
16 those in an envelope, and you can mark the outside of the envelope.
17 Also, he has to mark the document. Yes, he has to mark the
18 document. Mary will work with you.

19 MS. KANE: Okay. We'll do that after this --

20 JUDGE SIPPEL: Exactly. I mean, there's a bit of work to
21 do. But if you do the same thing, put a number on the one you're
22 going to call Calabrese, give that a number, and do what I
23 instructed you to do.

24 MS. KANE: That's not our witness, Your Honor. That's Mr.
25 Havens' witness.

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1 JUDGE SIPPEL: Yes, but you're objecting to it. I'm just
2 getting you to put it in -- you're objecting to it. I want your
3 objections to go in the record, and show me exactly graphically
4 where you're objecting.

5 MS. KANE: Understood, Your Honor.

6 JUDGE SIPPEL: Okay? So, we'll have that as an exhibit.

7 MR. KELLER: Your Honor?

8 JUDGE SIPPEL: Yes?

9 MR. KELLER: On this one exhibit, Maritime offered as an
10 exhibit the stipulation, the Joint Stipulation which you
11 subsequently accepted.

12 JUDGE SIPPEL: Yes.

13 MR. KELLER: We would move the admission of that exhibit.
14 It's Maritime Exhibit 1.

15 JUDGE SIPPEL: Yes, that's going in. I granted --

16 (Whereupon, the above-referred to document previously
17 marked as Maritime Exhibit 1 for identification, was
18 received in evidence.)

19 MR. KELLER: I have the copies down in the witness room
20 because of the fiasco this morning with the documents, but I'll get
21 it right afterwards and bring it to the reporter.

22 JUDGE SIPPEL: Was there a fiasco this morning?

23 MR. KELLER: Well, I was talking about the security --

24 JUDGE SIPPEL: You were. As I said, I apologize for all
25 that.

1 MR. KELLER: The guys were very nice.

2 JUDGE SIPPEL: Oh, yes, they're polite, all right, but
3 they're very insistent. All right, so we're taking care of that.

4 I don't think there's anything more to do. We have a lot
5 of work to do upstairs. Let me just consult with my staff here.

6 (Off the record comment)

7 JUDGE SIPPEL: Let me just make a general statement about
8 depositions and then see where we go with this. I don't want to
9 spend too much time on this.

10 Depositions have been marked as exhibits. This is by the
11 Havens group. And they're being put -- they're being asked to be
12 received into evidence in their entirety, having to deal with
13 specific evidence within that, representations within that
14 transcript.

15 What I'd require is that if a transcript is going to be
16 used, and it does say that the deposition of a party can be used
17 for any purpose, what I interpret any purpose to mean, any purpose
18 that I, with my limitations on the purpose. So, what I'm getting at
19 is that before any deposition can be received in evidence, the
20 relevant pages have to be separated from the rest of the exhibit,
21 from the rest of the deposition, and offered as an exhibit along
22 with the pages from the same deposition that the opposition wishes
23 to include. And then that constitutes the exhibit. That takes a
24 little bit of homework to do, but as I'm seeing it, there are not
25 any -- there are depositions being offered by Mr. Havens and Mr.

1 Stenger that don't comply with that requirement. So, I'm going to
2 -- rather than get into it today, I am going to cover that in my
3 order. But if you have a good -- a need for those depositions, Mr.
4 Stenger, and you want to start working on that approach, you're
5 welcome to do so, but I just want to give you a head's up ahead of
6 time. Do you understand what I'm saying?

7 MR. STENGER: Yes, Your Honor.

8 JUDGE SIPPEL: Okay.

9 MR. STENGER: I have one follow-up question regarding the
10 documents, but I don't want to interrupt, if there's other --

11 JUDGE SIPPEL: No, that's fine. You have other -- another
12 question with regard to documents.

13 MR. STENGER: Yes, Your Honor.

14 JUDGE SIPPEL: Okay.

15 MR. STENGER: And, again, it pertains to the State of New
16 Jersey Authorities that we've been talking about.

17 JUDGE SIPPEL: Yes.

18 MR. STENGER: The New Jersey Transit Authority.

19 JUDGE SIPPEL: Yes.

20 MR. STENGER: And the Sports Authority, who Pinnacle says
21 that they are providing service to. We had asked for -- the various
22 documents pertaining to those transactions were labeled
23 confidential, and they were not provided to us by Maritime.

24 JUDGE SIPPEL: Sign on to the order, sign on to the --

25 MR. STENGER: No, but that's just the beginning of my

1 story.

2 JUDGE SIPPEL: Well, you won't have to tell me the story
3 if you sign on the protection order.

4 MR. STENGER: I don't need to do that. We had filed a FOIA
5 request --

6 (Simultaneous speech)

7 MR. STENGER: -- with the Commission, but the Commission
8 denied our FOIA request. But then we filed a FOIA request with the
9 State of New Jersey, and so we got all the documents from the State
10 of New Jersey, because they're the party to the documents. They
11 don't consider them confidential.

12 JUDGE SIPPEL: See how easy it is?

13 MR. STENGER: Yes. When you deal with a government agency,
14 you may say that it's confidential, but the government agency
15 won't.

16 JUDGE SIPPEL: Well, we respect them.

17 MR. STENGER: I'm in the process --- I have a lot of
18 documents that are relevant to the alleged transaction between
19 Maritime and Pinnacle and these New Jersey Authorities, but I'm
20 just getting them now. I didn't have time -- I didn't get them in
21 time to exchange them, so I'm not sure how Your Honor wants to
22 handle that.

23 JUDGE SIPPEL: By motion.

24 MR. STENGER: All right.

25 MS. KANE: Well, Your Honor, it's written with the Bureau,

1 and the process would require that we have an opportunity to review
2 those exhibits, or proposed exhibits.

3 JUDGE SIPPEL: Of course.

4 MS. KANE: And submit additional objections, if necessary.

5 JUDGE SIPPEL: You're going to get a chance to do that.
6 He's going to submit a motion, you're going to get the documents.

7 MS. KANE: I understand, Your Honor, but we're six weeks
8 out from the commencement of this hearing, and we're also in a
9 process where three weeks from now, or less than three weeks from
10 now we're supposed to be submitting trial briefs. And we should be
11 at this point so close to the hearing, having all evidence before
12 us as we prepare those trial briefs. And, you know, we're going to
13 be prejudiced by not having access to that information, or even
14 knowing whether Your Honor is going to admit them into evidence.

15 JUDGE SIPPEL: How many pages are there?

16 MR. STENGER: Hundreds of pages of documents from the
17 State of New Jersey having to do with these transactions with
18 Pinnacle, and having to do with the fact that the State of New
19 Jersey is building its own 800 megahertz wireless system, and isn't
20 using these radios that Pinnacle claims that they are providing to
21 the State of New Jersey.

22 JUDGE SIPPEL: Whoa, Nellie. Can you find -- can you go
23 through all those documents, and can you come up with 10 good ones?

24 MR. STENGER: I will try to do that, Your Honor, yes.

25 JUDGE SIPPEL: Okay. Let's try and limit it to 10.

1 MS. KANE: Your Honor, we would still put on the record an
2 objection that all of these documents could have been obtained
3 during the discovery in this case, and in fact some of the
4 documents that Mr. Havens is citing in his motion for summary
5 decision are public documents on the ULS system. There's no excuse
6 for him not providing those documents as part of his initial direct
7 case. I mean, this is getting out of hand. You set timelines and
8 deadlines in orders that the Bureau has complied with, and other
9 parties have complied with. And, frankly, the Bureau has gone over
10 and above in responding to numerous frivolous motions from EVH and,
11 you know, responding to individual objections to 440 plus exhibits,
12 and having to challenge 30 plus additional witnesses because EVH is
13 not complying with the procedural rules in this case, or with the
14 Commission's rules on how we proceed in hearings. And it's just
15 getting to a point where it's just prejudicial to the Bureau for
16 Mr. Havens and his parties to continue to proceed as if there are
17 no rules in place.

18 JUDGE SIPPEL: I hear you. I hear you, but if you -- I
19 still -- if you give me 10 documents along with a motion to reopen
20 the record to receive them -- do you want them in as exhibits? You
21 don't know what you want them for if you haven't seen them.

22 MR. STENGER: I'm just getting the responses from the
23 State of New Jersey now. I apologize for the delay, but I'll review
24 them and make a motion as soon as I possibly can, and the Bureau
25 can certainly object to whatever I --

1 JUDGE SIPPEL: Well, she has a good--

2 MS. KANE: These are all documents, Your Honor, they could
3 have obtained at any point in time by signing onto the protective
4 order, and they chose -- for some reason Mr. Stenger still refuses
5 to do so --

6 MR. STENGER: I'm not sure the --

7 MS. KANE: -- which means when we go to hearing, I have
8 to leave the room every time we deal with confidential testimony or
9 confidential exhibits.

10 MR. STENGER: I'm not sure that these are documents that
11 I could have obtained earlier. Some of them may be documents having
12 to do with things that the State of New Jersey is just doing now.
13 I don't know. I haven't reviewed it all.

14 JUDGE SIPPEL: This is too much.

15 MR. STENGER: But I will make a motion.

16 JUDGE SIPPEL: Okay, this is too much. Mr. Kirk, I'm
17 sorry.

18 MR. KIRK: Your Honor, if I may.

19 JUDGE SIPPEL: Yes, sir.

20 MR. KIRK: I mean, this is one of the fundamental concerns
21 you raised very early in the process that with Mr. Havens
22 continually going through counsel, switching counsel, being pro se,
23 bringing in someone new, it's prejudicial and interfering with the
24 conduct of the hearing.

25 We now have a new counsel that's going out getting FOIA

1 requests, trying to submit documents on the eve of moving forward
2 with the hearing. That's patently unfair, and doesn't anticipate,
3 or isn't consistent with your prior rulings in this case. And you
4 had warned Mr. Havens not to engage in that type of conduct, yet
5 now it appears your going to be entertaining these late-filed
6 documents.

7 JUDGE SIPPEL: All right. I'm going to take this under
8 advisement. I don't -- I'm not happy with this at all, obviously,
9 but I don't want to -- you know, I don't want to jump around on my
10 rulings, but I'm going to give it a hard think.

11 You can file with me whatever you think is appropriate.
12 I don't want to see requests for more than 10 documents, though.
13 Let's take that -- I'm not going to do it. I'll tell you right now.

14 MR. STENGER: Your Honor --

15 JUDGE SIPPEL: I'm not going to take anything over 10.
16 I'll take the first 10 you have, and I'll look at them.

17 MR. STENGER: I understand. Your Honor, the one other
18 question I want to raise was were you going to make a ruling about
19 the discovery schedule for the character issue hearing for the --
20 we had filed cross motions as to what the discovery schedule is
21 going to be for the hearing on the other issues, A through F, and
22 H, and I. And I didn't hear -- if there's been a ruling on that
23 already, I may have missed it. I apologize.

24 JUDGE SIPPEL: No, that's pending.

25 MS. KANE: Your Honor, that's not actually accurate. What

1 happened was the joint -- there was a point proposal submitted by
2 all parties other than Mr. Havens, because they would not agree,
3 and Mr. Stenger's clients, and then Mr. Stenger, instead of filing
4 a cross schedule, or a proposed cross schedule, filed a substantive
5 20-page pleading in which he articulated his same argument about
6 the fact that he's not pleased with how the Bureau is running its
7 case.

8 We filed a motion to strike that pleading as
9 inappropriate, and as a unauthorized motion for reconsideration of
10 your order to proceed with hearing on Issue G. There was no
11 opposition to that motion to strike, so we would ask that our
12 motion to strike be granted, and that the schedule be imposed that
13 the Bureau and other parties propose.

14 JUDGE SIPPEL: Well, that -- all that is pending before
15 us. I didn't rule because I haven't gotten to them yet. If you --
16 there's an outstanding motion to strike that?

17 MS. KANE: There is, Your Honor, and there's been no
18 opposition to it.

19 JUDGE SIPPEL: And I didn't act on it, and there's been no
20 opposition?

21 MS. KANE: There's been no opposition, Your Honor.

22 JUDGE SIPPEL: If that's the case, it's granted.

23 MS. KANE: Thank you, Your Honor.

24 JUDGE SIPPEL: It's granted, absolutely.

25 MS. KANE: In which case, we would ask that the Bureau's

1 proposed schedule be admitted as the proposed schedule.

2 JUDGE SIPPEL: Well, I'm going to have to take a look at
3 that before I so decide, but there's been no opposition to your
4 schedule?

5 MS. KANE: The only opposition to our schedule, Your
6 Honor, was EVH's 20-page motion, or filing, response, whatever it
7 was, which at best provided a vague time frame for when they wanted
8 to start discovery, but 20 pages of which was -- referred to the
9 argument that Issue G should not go to hearing at all. And it was
10 essentially a motion to reconsider your ruling at the last pre-
11 hearing conference.

12 JUDGE SIPPEL: I will -- okay. I will address that in its
13 turn, but no more -- I don't want to see anything more filed on
14 that, with respect to that issue. I want a cold record. I want it
15 right as it is, but I don't know when I can get to it exactly in
16 light of all the work I have ahead of me.

17 MS. KANE: Understood, Your Honor.

18 JUDGE SIPPEL: For me this is a priority, this evidentiary
19 stuff. I'm sorry, not stuff, these evidentiary matters.

20 MS. KANE: Your Honor, I just -- before we recess for
21 today, I just want to make sure that there's some clarification on
22 the record as to how we're proceeding on the motions for summary
23 decision. Are you, in fact, entertaining EVH's motion for summary
24 decision that it filed, in which case we would ask that you suspend
25 the trial briefing schedule, and the commencement of the hearing

1 for December 9th, and allow the parties to respond, and also grant
2 us an extension to respond to that motion, as well as provide
3 opportunity for the Bureau and other parties who may wish to file
4 counter motions for summary decision.

5 JUDGE SIPPEL: I said I'm freezing, I'm freezing the
6 summary decision motion right now, right now. My ruling still
7 stands, that it's not an authorized motion. But, first of all, I
8 want to just -- so you don't have any obligations to respond,
9 nobody has an obligation to respond to it. You decide with other
10 counsel what it is that you may -- what you want to do and you let
11 me know within 10 days. How's that? What's 10 days from today? I've
12 got a calendar right here. Okay, 10 days is, let's see.

13 MR. STENGER: It should be the 14th, Your Honor.

14 JUDGE SIPPEL: Thank you.

15 MR. KELLER: I believe it's a Friday.

16 JUDGE SIPPEL: We work on Fridays.

17 (Off microphone comment)

18 JUDGE SIPPEL: I see it, yes. Well, okay, why don't you
19 let me know on Thursday, the 13th, let's say by 1:00 p.m.? Let me
20 know what you want to do.

21 MS. KANE: Well, Your Honor, that would only be 10 days
22 before our trial briefs would be due so -- I mean, it is
23 inefficient for us to work on trial briefs during this time period
24 if, in fact, we're going to reach some sort of agreement on
25 resolving these issues on motion for summary decision.

1 JUDGE SIPPEL: Well, you know what, just give me a brief
2 status report by 1:00 p.m. on the 13th.

3 MR. STENGER: I would have a different proposal. I would
4 propose that Your Honor modify your order banning summary decision
5 motions and say that you will entertain summary decision motions
6 from any party as long as they're filed, you know, by such and such
7 a day.

8 JUDGE SIPPEL: Not going to happen. it's not going to
9 happen, so forget about it.

10 MR. STENGER: All right. I just thought it would give them
11 a chance to --

12 JUDGE SIPPEL: Not going to happen.

13 MR. STENGER: You know, if they wanted to file a cross,
14 they could file a cross.

15 JUDGE SIPPEL: No. I mean, I -- I mean, everything I'm
16 hearing is correct. This is a bad time to be fooling around with
17 summary decision. And Ms. Kane is right, unless I hold the horses
18 on everything else that's going on, and I'm very, very reluctant to
19 do it. I want to know how badly you all -- when I say you all, I
20 mean -- I know what Mr. Stenger's position is, but Mr. Barrett and
21 yourself, Mr. Keller and yourself, I'm sorry.

22 MR. KELLER: No offense.

23 JUDGE SIPPEL: How strong you feel about this. If you
24 don't feel strongly, I'm going to forget about it, but you just let
25 me know by the 13th how things are progressing. Doesn't have to be

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1 long at all. One page would be fine.

2 MR. STENGER: Why can't they say right now? Why can't they
3 say right now whether they are willing to file --

4 JUDGE SIPPEL: Because they -- let me tell you why. First
5 of all, because they have to consult with their clients, there's a
6 lot of things that lawyers do. I don't know what you're doing.

7 MS. KANE: Well, and Mr. Havens is not here, and Mr.
8 Havens is not represented by counsel here, so we can't speak to
9 that issue.

10 JUDGE SIPPEL: Well, he is. Wait a minute, wait a minute.
11 He is. All of these documents have said EVHs at the end of it. Mr.
12 Havens is represented by counsel here.

13 MS. KANE: Well, he's still taking the position, Your
14 Honor, that he's acting pro se.

15 JUDGE SIPPEL: Well, he can act for himself, but he's
16 represented by counsel in this proceeding.

17 MR. STENGER: Well, I'm not representing Mr. Havens, but
18 all of these motions have been filed jointly with him.

19 JUDGE SIPPEL: Of course, of course. And you said that you
20 are responsible for everything that's in those representations like
21 the "O"s, in conjunction with Mr. Havens. I say he's your client.
22 I mean, you know. Yes, sir, Mr. Engle?

23 MR. ENGEL: Request for clarification. So, does the trial
24 briefing schedule remain the same?

25 JUDGE SIPPEL: Yes.

1 MR. ENGEL: It's on course for December 9th?

2 JUDGE SIPPEL: Yes, sir.

3 MR. ENGEL: And take a step if we could, Your Honor,
4 regarding your update for summary decision. I assume what you're
5 asking is can the parties agree on all the facts so that they'll
6 just make opposing legal arguments?

7 JUDGE SIPPEL: Well, no, it's not that. It's just -- there
8 is an initial question, and that is how do the other parties feel
9 about a cross motion for summary decision as a procedure? And I
10 don't need to say it, you have to have everything definitively
11 thought through. You may go back to your superiors and they may
12 tell you we're not going to have any part of that, forget about it,
13 as they're entitled to do. Mr. Keller may go back to Mrs. DePriest
14 or somebody, he may be told no, that's a lot of nonsense. We've
15 gotten this far, let's go all the way.

16 MS. KANE: Well, Your Honor, if we're going to maintain
17 the briefing schedule for trial briefing, I mean, that's an
18 excessive amount of effort to put those trial briefs together, as
19 you're well aware.

20 JUDGE SIPPEL: I'm aware.

21 MS. KANE: And, you know, we're talking about it being due
22 right -- the day right before Thanksgiving, essentially. I'd rather
23 not lose 10 days, not knowing whether or not we're going to do
24 that.

25 JUDGE SIPPEL: You know what --

1 MS. KANE: So, could we -- can you alter your order to --

2 JUDGE SIPPEL: Yes, I will.

3 MS. KANE: -- require the parties to figure out if we're
4 going to proceed with summary decision, or proceed with a hearing
5 in five days?

6 JUDGE SIPPEL: You mean five days from now?

7 MS. KANE: Well, Your Honor, all we're trying to decide is
8 within five days whether the parties would rather proceed -- if I
9 understand your order correctly, what you would like is a status
10 report on whether the parties can -- would rather proceed with
11 summary decision in lieu of a hearing on December 9th, or whether
12 we're going to proceed with hearing on December 9th, and summary
13 decision is off the table. That should not take 10 days.

14 JUDGE SIPPEL: Oh, okay.

15 MS. KANE: That should take several days at best, maybe
16 even by Friday, to have that decision made. And at that point, we
17 should be able to submit to you a joint submission to Your Honor
18 about whether the parties are willing to proceed with summary
19 decision. That way the Bureau is not prejudiced by losing that time
20 either working on trial briefs that end up becoming unnecessary, or
21 on spending time on trying to corral everybody on a summary
22 decision order while they should be spending their time and their
23 resources preparing for hearing.

24 JUDGE SIPPEL: I should have said on or before. I have no
25 objection to getting it early.

1 MR. STENGER: I just heard one thing that raises a
2 question in my mind.

3 JUDGE SIPPEL: Yes, sir?

4 MR. STENGER: And it's probably my own --

5 JUDGE SIPPEL: Mr. Stenger, yes, sir?

6 MR. STENGER: -- ignorance. Ms. Kane was saying that
7 writing the summary decision motion is very burdensome when you're
8 also writing a trial brief. I just would like to clarify, I don't
9 have the experience with Your Honor, and I apologize. I was
10 planning that my trial brief would be pretty much the same as my
11 motion for summary decision. Maybe I would adduce a few facts from
12 the record; whereas, my summary decision motion I simply accept
13 everything they said as true. But could you specify a little bit
14 about what you expect to see in a trial brief, because Ms. Kane
15 feels that it's significantly different from the brief that I filed
16 on summary decision, I want to make sure that I understand what the
17 requirements are.

18 JUDGE SIPPEL: Didn't I give an instruction on that?

19 MS. KANE: I don't believe you did, Your Honor.

20 JUDGE SIPPEL: Oh. I'm just trying to think if I -- I can
21 do it off the top of my head, but am I getting it all right? You
22 know what, I'm going to give you an email. I'll give you an email
23 this afternoon, let you know.

24 MR. STENGER: Thank you.

25 JUDGE SIPPEL: Yes, I mean, it's not much. I mean, the

1 outline of the subject matters are about four, five, or six maybe.
2 It's not going to take me long at all. I just don't want to confuse
3 myself and yourselves by doing it off the top of my head right now.
4 Okay, you've exhausted me. My thinking process isn't as good as it
5 used to be.

6 All right. I think we've covered - I mean, I really
7 apologize about this. I didn't think it was going to be -- I got
8 the impression that when you first talked about this, Ms. Kane,
9 about cross motions, that you kind of thought that that might a
10 workable solution. I didn't want to encroach on your trial
11 preparation in any way, so --

12 MS. KANE: I think it would be workable solution, not to
13 interrupt Your Honor, but I think it would be a workable solution
14 to -- obviously, I'd have to run it through my client to submit a
15 case on the pleadings --

16 JUDGE SIPPEL: Of course.

17 MS. KANE: -- rather than go to hearing. I certainly
18 think that we could aim to go in that direction, but not at the
19 same time and consistent with our -- the timing, because we're on
20 such tight time schedules for pre-trial preparations.

21 JUDGE SIPPEL: Yes, I hear what you're saying.

22 MS. KANE: To do them both at the same time would be an
23 undue burden on the Bureau.

24 JUDGE SIPPEL: I hear what you're saying. Hold on just a
25 second.